EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

S. GREGORY HAYS, Receiver for Mobile Billboards of America, Inc.; California Mobile Billboards, et. al.,	
Plaintiff,	CIVIL ACTION
v.	NO. 1:06-CV-754-CAP
PAUL, HASTINGS, JANOFSKY & WALKER LLP,	
Defendant.	

O R D E R

This matter is before the court on the plaintiff's emergency motion to stay discovery pending certain related criminal proceedings [Doc. No. 59]. In the motion, the plaintiff asks the court to stay the case for six months.

On June 12, 2007, this court denied ruling on the plaintiff's requested stay until after the expedited briefing schedule it set forth had passed.

I. Background

The court previously detailed the factual allegations at issue in this case in its order of September 14, 2006 [Doc. No. 31]. Subsequently, on May 10, 2007, a grand jury issued an indictment against Michael Lomas, Michael Young, Laurinda Holohan, Susan

Knight, Barry Maloney, and two sales agents (Scott Hollenbeck and Arthur Anderson, Jr.)[Doc. No. 59, Ex. A]. The indictment contains one count of conspiracy under 18 U.S.C. § 371 and seventeen counts of mail fraud under 18 U.S.C. §§ 1341 & 1342. Id. The indictment centers around the use of false and misleading statements, both spoken and in documents, designed to trick individuals into making investments in the mobile billboard investment scheme that forms the factual underpinnings of the instant civil proceeding.

Discovery is currently scheduled to end on August 17, 2007 [Doc. No. 55]. The parties have indicated that they intend to take the depositions of former principals and employees of Mobile Billboards of America, Inc., including Michael Lomas, Michael Young, Laurinda Holohan, Sue Knight, and former attorney Barry Maloney (collectively, the "Proposed Deponents"). None of the Proposed Deponents are parties to the pending civil suit. In light of the pending criminal proceeding, the plaintiff has indicated that he anticipates the Proposed Deponents invoking their Fifth Amendment privilege against self-incrimination during any depositions in the time period remaining for fact discovery in this case. The plaintiff moves this court for a temporary stay of discovery to "let the dust settle" in the criminal proceedings before the depositions go forward in this case.

II. Analysis

The court has the power to stay a civil proceeding due to an active, parallel criminal investigation. See S.E.C. v. Healthsouth Corp., 261 F. Supp. 2d 1298, 1326 (N.D. Ala. 2003). The Fifth Amendment to the Constitution, however, does not necessarily require a stay of a civil proceeding pending the outcome of criminal proceedings. See Baxter v. Palmigiano, 425 U.S. 308, 318 (1976) ("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence against them: the Amendment 'does not preclude the inference where the privilege is claimed by a party to a civil cause'") (citing 8 J. Wigmore, Evidence 439 (McNaughton rev. 1961)); United States v. $153,968.16 Seized From Bank of America Account No. XXXXXXXX8500, No. 1:05-CV-2084, 2007 U.S. Dist. LEXIS 24907, at *9 (N.D. Ga. Mar. 21, 2007) ("The mere existence of parallel criminal and civil proceedings do not violate one's constitutional rights."). A stay in a civil case is an "extraordinary remedy." Walsh Securities, Inc. v. Cristo Properties Management, Ltd., 7 F. Supp. 2d 523, 527 (D.N.J. 1998). The question of whether or not discovery should be stayed is addressed to the reasonable discretion of the court. See F.D.I.C. v.

Fireman's Fund Insurance Co., 271 F. Supp. 689, 691 (S.D. Fla. 1967).

Stays to civil proceedings may be especially appropriate where a party under indictment for a serious criminal offense is also required to defend a civil or administrative act involving the same matter. See S.E.C. v. Dresser Industries, Inc., 628 F.2d 1368, 1376 (D.C. Cir. 1980); S.E.C. v. Healthsouth, 261 F. Supp. at 1326. The court may consider a variety of factors in staying a case, including the extent to which the defendant's Fifth Amendment rights are implicated, the interest of the plaintiff in proceeding expeditiously with this litigation and the potential to prejudice the plaintiffs from delay, the burden any particular aspect of the proceedings may impose on the defendant, the efficient use of judicial resources, the interests of persons not parties to the civil litigation and the interest of persons not parties to the civil litigation and the interest of the public in the pending civil and criminal litigation. S.E.C. v. Healthsouth, 261 F. Supp. at 1326.

Discretion to stay a civil proceeding should be exercised in favor of discovery where the party bringing the action seeks to stay discovery and where such a stay would prejudice a defendant who is not alleged in any way to have occasioned the bringing of the indictment. F.D.I.C. v. Fireman's Fund Insurance Co., 271 F. Supp. at 691; U.S. v. Swissco Properties Within the Southern District of Florida, 821 F. Supp. 1472, 1474 (S.D. Fla. 1993) ("[C]ourts will often deny motions for stay of civil discovery where the party bringing the action is the same party that seeks to stay discovery."); see DiPalma v. Medical Mavin, Ltd., No. 1:95-CV-8094, 1998 WL 113432, at *3 (E.D. Pa. Feb. 5, 1998)(in denying a motion to stay sought by the plaintiff, stating "the dilemma faced by plaintiff is self-imposed. He is the one who has initiated civil proceedings and pressed for an award of damages. He seeks to eat his cake and have it too.").

While certain of the underlying facts of this civil proceeding and the basis of the criminal indictment against the Proposed Deponents overlap, neither the plaintiff nor the defendants in this civil proceeding are named subjects of the criminal proceeding. Likewise, neither the United States of America nor the individuals named in the indictment are a party to this civil proceeding. The plaintiff's motion for stay does not arise out of a case in which the plaintiff is attempting to escalate the pressure on a defendant by manipulating simultaneous civil and criminal proceedings, both of which it controls. See, e.g., S.E.C. v. Healthsouth, at 578-79. Here, rather, the stay is sought by the plaintiff, whose constitutional rights in the parallel criminal proceeding are not at issue.

Accordingly, after careful consideration of the factors involved in staying discovery, the court finds that a stay in this case is not appropriate at this time.

Conclusion

For the reasons discussed herein, the court DENIES the plaintiff's emergency motion to stay [Doc. No. 59].

SO ORDERED, this 17th day of July, 2007.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge